

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO. 1:08CV434

BOND SAFEGUARD INSURANCE
COMPANY,

Plaintiff,

Vs.

ORDER

LR BUFFALO CREEK, LLC; LAND
RESOURCE, LLC, f/k/a Land
Resource Companies, LLC; LAND
RESOURCE GROUP, INC.; JAMES
ROBERT WARD; MICHAEL FLASKEY;
ROBERT VACKO; JASON BEAIRD;
REALAN INVESTMENT PARTNERS,
LLLP; DPB SOLUTIONS, LLC;
WEEKS-GREY ROCK, LLC; EURAM
GREY ROCK ASSOCIATES, L.P.;
DANIEL D. DINUR; BARRINGTON
BRANCH; BLUE MIST FARMS, LLC;
BRIDGE POINTE AT JEKYLL SOUND,
LLC; CLARKS HILL LAKE, LLC;
COASTLINE PROPERTIES, LLC;
ROARING RIVER, LLC, f/k/a Greyrock
at Lake Lure, LLC; LAIRD BAYOU,
LLC; LAIRD POINT, LLC; LAND
RESOURCE GROUP OF NORTH
CAROLINA, LLC; LAND RESOURCE
ORCHARDS, LLC; LAND RESOURCE
SATILLA RIVER, LLC; LAND
RESOURCE WATTS BAR, LLC;
LR BAYTREE LANDING, LLC; LR
RIVERSEA, LLC; POINT PETER,

LLLP; VILLAGES AT NORRIS LAKE,)
 LLC; LAND RESOURCE MEIGS)
 COUNTY, LLC; LRC HOLDINGS, LLC;)
 LAND RESOURCE ROUND)
 MOUNTAIN, LLC; SOUTHERN HOA)
 MANAGEMENT, LLC; WACHOVIA)
 BANK, N.A.; and KEYBANK, N.A.,)
)
 Defendants.)
 _____)

THIS MATTER is before the Court on the issue of default as to certain Defendants.

The instant lawsuit arises from numerous disputes over a subdivision called "Grey Rock at Lake Lure," located in Rutherford County, North Carolina. **Complaint, filed September 12, 2008, at 7.** The pertinent procedural history is as follows. Plaintiff's initial complaint, filed in September 2008, named the following 34 Defendants:

- LR Buffalo Creek, LLC
- Land Resource, LLC, f/k/a Land Resource Companies, LLC
- Land Resource Group, Inc.
- James Robert Ward
- Robert Vacko
- Michael Flaskey
- Jason Beaird
- Realan Investment Partners, LLLP
- DPB Solutions, LLC
- Weeks-Grey Rock, LLC
- Euram Grey Rock Associates, LP

- Daniel D. Dinur
- Barrington H. Branch
- Blue Mist Farms, LLC
- Bridge Point at Jekyll Sound, LLC
- Clarks Hill Lake, LLC
- Coastline Properties, LLC
- Roaring River, LLC, f/k/a Greyrock at Lake Lure, LLC
- Laird Bayou, LLC
- Laird Point, LLC
- Land Resource Group of North Carolina, LLC
- Land Resource Orchards, LLC
- Land Resource Satilla River, LLC
- Land Resource Watts Bar, LLC
- LR Baytree Landing, LLC
- LR Riversea, LLC
- Point Peter, LLLP
- Villages at Norris Lake, LLC
- Land Resource Meigs County, LLC
- LRC Holdings, LLC
- Land Resource Round Mountain, LLC
- Southern HOA Management, LLC
- Wachovia Bank, N.A.
- Keybank, N.A.

Id. at 2-6. According to the record, all Defendants were served with a copy of the complaint and summons except for James Robert Ward.

Certificates of Service, filed September 26, 2008, and October 2, 2008.

On October 24, 2008, Plaintiff moved for entry of default and default judgment as to the following 10 Defendants (hereinafter, the “Defaulting Defendants”), on the basis that these Defendants had failed to move, plead, or otherwise respond to the summons:

- Blue Mist Farms, LLC
- Bridge Point at Jekyll Sound, LLC
- Clarks Hill Lake, LLC
- Coastline Properties, LLC
- Laird Bayou, LLC
- Laird Point, LLC
- Point Peter, LLLP
- Roaring River, LLC, f/k/a Greyrock at Lake Lure, LLC
- Southern HOA Management, LLC
- Villages at Norris Lake, LLC

Motions for Entry of Default and Default Judgment, filed October 24, 2008. Apparently because of Plaintiff's failure to submit proposed default orders, the Clerk did not enter default until October 30, 2008, four days after Plaintiff's motions were filed. **Entries of Default, filed October 30, 2008; Order, filed October 29, 2008, at 1 n.1 (explaining the reason for the Clerk's four day delay).**

In November 2008, a suggestion of bankruptcy was filed with the Court, explaining that the Defaulting Defendants had filed for voluntary Chapter 11 bankruptcy protection in the Middle District of Florida on October 30, 2008. **Suggestion of Bankruptcy, filed November 21, 2008, at 1.** The same bankruptcy filing also pertained to the following 12 Defendants, who had not previously been subject to default in this Court:

- LR Buffalo Creek, LLC
- Land Resource, LLC, f/k/a Land Resource Companies, LLC

- Land Resource Group, Inc.
- Land Resource Group of North Carolina, LLC
- Land Resource Orchards, LLC
- Land Resource Satilla River, LLC
- Land Resource Watts Bar, LLC
- LR Baytree Landing, LLC
- LR Riversea, LLC
- Land Resource Meigs County, LLC
- LRC Holdings, LLC
- Land Resource Round Mountain, LLC

***Id.* at 1-2.** These 12 Defendants, together with the Defaulting Defendants (hereinafter, collectively, the “Bankrupt Defendants”), noticed the Court that all matters against them were automatically stayed as of October 30, 2008, pursuant to 11 U.S.C. § 362. ***Id.* at 2.**

It is well-settled that “[w]hen litigation is pending against the debtor at the time a bankruptcy case is commenced, the litigation is stayed automatically.” **3 Collier on Bankruptcy ¶ 362.03[3], at 362-15 (Lawrence P. King et al. eds., 15th ed., rev. 2005); see 11 U.S.C. § 362(a) (providing that a bankruptcy petition operates as an automatic stay of “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor”).** Furthermore, “if the nonbankruptcy court continues the action or enters a judgment

notwithstanding the imposition of the automatic stay, the action or judgment should be considered ineffective against the debtor.” *Id.*

In this case, the Defaulting Defendants’ bankruptcy petition was filed on the same date that the Clerk entered default against these Defendants – October 30, 2008. Therefore, in an abundance of caution, in order to avoid a violation of the automatic stay, the undersigned will strike these entries of default.

Furthermore, the Court will consider this action stayed as of October 30, 2008, as against the 22 Bankrupt Defendants.¹ **11 U.S.C. § 362(a).** The remaining 12 Defendants (the “Non-Bankrupt Defendants”), who are not subject to the stay, are as follows:

- James Robert Ward
- Robert Vacko
- Michael Flaskey
- Jason Beaird
- Realan Investment Partners, LLLP

¹ Thus, Plaintiff’s amended complaint, filed October 30, 2008, which purports to name all 34 Defendants, in fact pertains only to the Non-Bankrupt Defendants. **Amended Complaint, filed October 30, 2008.** Although the Court, at the time the amended complaint was filed, issued new summonses pertaining to the 22 Bankrupt Defendants, such are null and void, as these Defendants are not currently subject to service of process. **11 U.S.C. § 362(a) (staying, *inter alia*, “the issuance or employment of process” against the debtor); see Summons, filed October 31, 2008.**

- DPB Solutions, LLC
- Weeks-Grey Rock, LLC
- Euram Grey Rock Associates, LP
- Daniel D. Dinur
- Barrington H. Branch
- Wachovia Bank, N.A.
- Keybank, N.A.

Several of these parties have filed substantive motions to dismiss, which the Court has under advisement. **Motion to Dismiss by Realan**

Investment Partners, LLLP; DPB Solutions, LLC; Weeks-Grey Rock, LLC; Euram Grey Rock, LLC; Daniel D. Dinur, and Barrington H.

Branch, filed November 10, 2008; Motion to Dismiss by Wachovia

Bank, N.A. and Keybank, N.A., filed December 8, 2008.² These motions remain unaffected by the instant order.

IT IS, THEREFORE, ORDERED that the Clerk's entries of default as to Defendants Blue Mist Farms, LLC; Bridge Pointe at Jekyll Sound, LLC; Clarks Hill Lake, LLC; Coastline Properties, LLC; Laird Bayou, LLC; Laird Point, LLC; Point Peter, LLLP; Roaring River, LLC, f/k/a Greyrock at Lake

² Also, on December 1, 2008, Defendants James Robert Ward, Michael Flaskey, Robert Vacko, and Jason Beaird filed a document styled "Motion to Dismiss and Answer." Pursuant to the Court's Local Rules, "[m]otions to dismiss contained in answers to complaints . . . are considered by the Court to be preserved. A party wishing to have decided any preserved motion shall file a separate motion and supporting brief." **L.Civ.R. 7.1(C)(1).**

Lure, LLC; Southern HOA Management, LLC; and Villages at Norris Lake, LLC, are hereby **STRICKEN** from the record and shall have no force or effect.

IT IS FURTHER ORDERED that, consistent with 11 U.S.C. § 362(a), this action is automatically **STAYED** as of October 30, 2008, with respect to Defendants Blue Mist Farms, LLC; Bridge Point at Jekyll Sound, LLC; Clarks Hill Lake, LLC; Coastline Properties, LLC; Laird Bayou, LLC; Laird Point, LLC; Point Peter, LLLP; Roaring River, LLC, f/k/a Greyrock at Lake Lure, LLC; Southern HOA Management, LLC; Villages at Norris Lake, LLC; LR Buffalo Creek, LLC; Land Resource, LLC, f/k/a Land Resource Companies, LLC; Land Resource Group, Inc.; Land Resource Group of North Carolina, LLC; Land Resource Orchards, LLC; Land Resource Satilla River, LLC; Land Resource Watts Bar, LLC; LR Baytree Landing, LLC; LR Riversea, LLC; Land Resource Meigs County, LLC; LRC Holdings, LLC; and Land Resource Round Mountain, LLC.

Signed: February 2, 2009



Lacy H. Thornburg
United States District Judge

